THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.14652 OF 2007

DATED JULY, 2007

BETWEEN

D.Nageshwara Rao and others.

… Petitioners

AND

The District Collector, Krishna District, at Machilipatnam and another.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.14652 OF 2007

ORDER:

The three petitioners are residents of Lakshmipuram Village, Kruthivennu Mandal in Krishna District. Their case, as disclosed in the affidavit of the first petitioner in support of the writ petition, is as follows. The land admeasuring Acs.800.00 in R.S.No.443 situated in the village is a Government Poramboke land. Though initially, Government granted pattas, they were cancelled. However, some pattadars or encroachers occupied the land and constructed fish/prawn tanks. According to petitioners, there are two fish tanks and 500 to 600 prawn/shrimp tanks in R.S.No.443. The petitioners herein occupied the land admeasuring Acs.7.00 and constructed fish tanks. They allege that they left fish seed in December, 2006, which would be ripe for harvest in January, 2008. The second respondent issued a show cause notice No.Rc.B.29/2007, dated 22.05.2007 calling upon the petitioners that they occupied the Government drainage Poramboke land and developed fish tanks without obtaining any permission from Revenue Department or Drainage Department. They were also asked to remove the water from the fish tanks otherwise steps would be taken to demolish the fish tanks. Assailing the same, they filed W.P.No.11019 of 2007. This Court disposed of the writ petition on 05.06.2007 giving liberty to petitioners to submit explanations before second respondent, who was directed to pass necessary orders. The petitioners then submitted explanations on 21.06.2007 alleging that there are number of fish tanks in the area and that they are alone singled out in a discriminatory manner. After considering explanations, second respondent passed orders on 04.07.2007, directing petitioners to remove his fish tanks within two days from the date of issue of the order. Assailing the said order, present writ petition is filed.

Learned counsel for petitioners submits that the impugned order is in violation of principles of natural justice. When the show cause notice was

issued to remove the water, the impugned order is passed to remove the fish tanks and petitioners are deprived of adequate and effective opportunity to represent the second respondent. Secondly, he submits that when the petitioners have been in possession of the Government land, where they constructed fish tanks, no objection was raised by second respondent even while the petitioners started fishing season in December, 2006, and therefore, the second respondent is barred on the principle of acquiescence to issue impugned order. Thirdly, he submits that though the land is a Government land, as encroachers/occupants, the petitioners are entitled to the benefits flowing from the improvements made. Placing reliance on the decision of the Privy Council in **Vallabdas v Development Officer, Bandra**[1] and two decisions of the Madras High Court in **Narayana Sa v Balaguruswami Nadar**[2] and **Venkatasubbaiah v Thirupurasundari**[3], learned counsel submits that legal maxim '*quic quid inaedificatur solo, solo cedit* (whatever is affixed to the soil belongs to the soil) has no application to India. **Opposing** the writ petition, the learned Assistant Government Pleader submits that the Mandal Revenue Officer is taking steps to remove all the fish tanks as there were complaints by the neighbouring farmers, that the fish tanks are causing harm to the agricultural lands in the area and that such action is justified on the principle laid down by the Supreme Court in **S.Jagannath v Union of India**[4] and a Division Bench Judgment of this Court in **Madireddy Padma Rambabu v District Forest Officer, Kakinada**[5].

The submission of the learned counsel for petitioners that principles of natural justice are violated is wholly misconceived. The show cause notice which was issued in vernacular language would show that they were asked to remove the water from the fish tanks as other wise bunds will be removed. This only means that for removing the water necessarily bunds have to be broken. The impugned order precisely pointed out that fish tanks will be demolished. Reading show cause notice would certainly shows that the same is issued directing encroachers to remove the fish tanks and there was no element of surprise warranting application of extended rule '*adi alteram partem*'. Even otherwise, when the petitioners are in occupation of the Government Drainage Poramboke land, it is always open to Mandal Revenue Officer to remove the fish tanks and also evict the petitioners. Secondly, the 'principle of acquiescence' has no application when the encroacher is sought to be removed or his activities are sought to be objected by revenue authorities. It is not the case of the petitioners that the respondents themselves have permitted petitioners to construct fish tanks on the land encroached upon by them. On the principle of 'Doctrine of Public Trust', the respondents cannot be said to have acquiesced in the

property of the petitioner. Lastly, the decision cited by learned counsel for petitioners came to be delivered in the background of the fact that either lessees or mortgages of the land claimed right to improvements made on the land demised. This is not such a case. The petitioners are encroachers and an encroacher/trespasser cannot claim such a right in equity. It is no doubt true that as held by Full Bench of Seven learned Judges of this Court in **LAO-cum-RDO, Chevella Division v Mekala Pandu**[6]**,** when the land assigned/granted to a citizen is sought to be resumed, such assignee/grantee is entitled for compensation for the improvements on the land. This is because assignment or grant is considered an act of conferring conditional right in the property of the Government. Petitioners who are admittedly encroachers of the Government land cannot claim any such right.

This Court does not find any merit in the writ petition and is accordingly dismissed. No costs.

(V.V.S.RAO,J)

18.07.2007.
pln

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[1] AIR 1929 Privy Council 163

[2] AIR 1924 Madras 187

[3] AIR 1965 Madras 185

[4] AIR 1997 SC 811

[5] 2002 (1) ALD 728 (DB)

[6] 2004 (2) ALD 451 (LB)